IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 613 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD.

Versus

NITABEN VISHNUPRASAD SATHWARA

Appearance:
MR RK MISHRA for Petitioner No. 1
..... for Respondent No. 1-7

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 04/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This Appeal under Section 173 of the Motor

Vehicles Act is directed against the award and judgment dated 30.10.2001 passed in Motor Accident Claim Petition No. 557/94 by the Motor Accident Claims Tribunal (Auxiliary), District Sabarkantha at Himatnagar.

2. Heard Mr. R.K. Mishra, learned Advocate for the appellant. Mr.Mishra, learned advocate for the appellant has shown to us the copy of the deposition Exh.35 of the claimant - widow of the victim in the accident, copy of the evidence of Kanaiyalal Prabhudhas, copy of panchnama dated 5.6.1994, copy of the postmortem notes, copy of medical certificate suggesting the injuries received by the deceased and the evidence relating to the income of the deceased at the time of accident and for the subsequent period upto July 2018. In view of this and the admitted factual position, there is no need to call for the record and proceedings of the Trial Court as the driver of the offending truck was deleted and therefore not examined as witness.

3. It is submitted by Mr. Mishra for the appellant that the deceased has been held contributory negligence to the extent of only 25% in the accident. It is stated that the contributory negligence of the deceased has been estimated on the lower side; that the deceased was riding scooter with the claimant widow as the pillion rider with small child on her lap. As per the evidence of the claimant, the scooter driven by the deceased followed the truck and both the vehicles were proceeding in the same direction and the truck suddenly applied the brake, with the result, the scooter from behind dashed with the truck and that even after the accident, the truck released the brake and went ahead upto the distance of 25 feet.

3. It appears from the panchnama that the accident took place in the early hours of the day. The sudden application of brake by driver of the offending motor truck would naturally result into the dash from behind by the vehicle following the truck. The scooterist having not kept safe distance collided with the truck, has led to the assessment of his contributory negligence to the extent of 25%. We have perused the panchnama and also considered the evidence of the claimant who was the eye witness of the occurrence. Since she was the pillion rider on the scooter, which met with the accident. As pointed out above, the driver of the motor truck has not been examined as witness on the question of negligence, if any, of the scooterist. Under the circumstances, the contributory negligence of the scooterist at 25% cannot be regarded to be improper or on lower side and for not keeping the safe distance, the contributory negligence on

the part of the scooterist to the extent of 25% has been properly estimated by the tribunal.

4. As far as the income of the deceased is concerned, the accident took place in June 1994. The evidence on record suggests that at the time of accident the income of the deceased was Rs. 3,175/- per month but rounded off to the nearest would be Rs. 3,200/- p.m. The evidence on record suggests that the income of the deceased in the month of July, 1994 would have been Rs. 3,605/-. The tribunal has considered the future uncertainties and deducted half of the prospective income, which would come to Rs.54,407 and deducting 1/3rd of the personal expenses of the deceased, the future loss of income has been assessed at Rs. 3,605/- p.m. as per the structured formula and applying the multiplier of 17 having regard to the age of the deceased to be 34 years on the date of the accident, the loss of future income estimated by the Tribunal cannot be regarded to be in any manner unjustified or improper.

5. No other point has been agitated by the learned Counsel for the appellant. Having regard to the evidence as stated above with regard to the negligence as well as the income of the deceased, the appellant has not been able to show any point which requires consideration in the appeal and the impugned award does not call for any interference as suggested from the evidence placed before us.

6. In the result, the Appeal being devoid of merit, is summarily dismissed at the admission stage.

7. In view of the above order, the Civil Application No.2313/2002 does not survive and is disposed of as having become infructuous.

(N.G.Nandi, J.)

(J.R. Vora,J.)

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